

1. On May 1, 2008, Defendant filed its Answer to Plaintiff's Complaint. *See*, Answer attached hereto as Exhibit "A".
2. In responding to Plaintiff's Requests to Admit, Interrogatories and Requests for Production and review of thousands of documents in answering the same, Defendant has learned that the roof collapse at issue in this matter is not a covered

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loss under the Policy.

3. Defendant now seeks leave to withdraw its Answer and file an Amended Answer to Plaintiff's Complaint to deny Paragraph 11 of the Complaint to clarify that the roof collapse is not a covered loss based on various inspection reports and correspondence from the Plaintiff's contractors in remedying the roof collapse.
4. The denial of Paragraph 11 is synonymous with Defendant's Answers to Plaintiff's Request to Admit, which were served on Plaintiff on June 6, 2008. *See*, Answers to Requests to Admit attached as Exhibit "B".
5. Furthermore, Defendant seeks leave to Amend its Answer to Paragraph 18 of Plaintiff's Complaint because Vishnu Gor provided three days of Examinations Under Oath ("EUO") – not two as stated in Paragraph 18 of Plaintiff's Complaint. Specifically, Plaintiff had examinations under oath on March 9, 2004, March 10, 2004 and May 8, 2006.
6. Finally, Defendant seeks leave to Amend its Answer to Paragraph 19 of Plaintiff's Complaint and its Amend Defendant's Answer to Plaintiff's Request to Admit No. 32, because Defendant has paid Plaintiff a total amount of \$154,834 and the Answer to Plaintiff's Complaint and Request to Admit No. 32 state that Defendant has not paid more than \$150,000 to Plaintiff.
7. The Defendant, by the present Motion, also seeks to Amend its Affirmative Defenses and add the Affirmative Defense that Plaintiff failed to mitigate damages, as required by the Insurance Policy. Again, after review of the numerous documents in answering discovery, Defendant has discovered that failure to mitigate damages is an additional affirmative defense available to

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Defendant under the Policy.

WHEREFORE, the Defendant, Seneca Insurance Company, Inc., requests that this Court enter an Order granting withdrawal of Defendant's Answer to Plaintiff's Complaint and withdrawal of Defendant's Answers to Requests to Admit No. 32 and granting Defendant leave to file an Amended Answer, Amended Affirmative Defenses and Amended Answer to Request to Admit number 32, *instantly*.

Respectfully Submitted:

**SENECA INSURANCE COMPANY**

s/ James J. O'Hagan  
James J. O'Hagan (ARDC No. 2094754)  
Jamie L. Filipovic (ARDC No. 6278943)  
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ATTORNEYS FOR DEFENDANT  
SENECA INSURANCE COMPANY, INC.

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

VJ COMPOUNDING CORPORATION, d/b/a	)	
L. CARLTON MERTZ, CO., an Illinois	)	
Corporation,	)	
	)	
Plaintiff,	)	Case No. 08 CV 1738
	)	
v.	)	Judge Matthew Kennelly
	)	
SENECA INSURANCE COMPANY, INC. a	)	Magistrate Judge Susan Cox
subsidiary of SENECA INSURANCE GROUP,	)	
INC. a Delaware Corporation,	)	
	)	
Defendant.	)	

**SENECA INSURANCE COMPANY, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**

**NOW COMES** the Defendant, Seneca Insurance Company, Inc., by and through its attorneys, O'Hagan Spencer LLC, and for its Answer to the Complaint filed by Plaintiff, V J Compounding Corporation, Defendant states as follows:

**The Parties**

1. Plaintiff, V J Compounding Corporation, d/b/a L. Carlton Mertz Co. (the "Plaintiff"), is an Illinois corporation duly licensed to do business in the State of Illinois and, until the incidents referenced herein, was conducting business at 6147 West 65<sup>th</sup> Street, Bedford Park, Illinois, 60636, as a manufacturer of industrial cleaning solutions. Plaintiff maintains it (sic) principal place of business at 9960 W. 191<sup>st</sup> Street, Unit K, Mokena, Illinois, 60448.

**ANSWER:** This Defendant has insufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations in Paragraph 1 of Plaintiff's Complaint, but demands strict proof thereof.

2. Defendant, Seneca Insurance Company, Inc., a subsidiary for Seneca Insurance Group, Inc. (the "Defendant"), in (sic) a Delaware corporation with its principal place of business located in New York, New York.

**ANSWER: This Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.**

**Jurisdiction and Venue**

3. The parties are of diverse citizenship.

**ANSWER: This Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.**

4. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

**ANSWER: This Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Complaint.**

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a).

**ANSWER: This Defendant states that the allegations in Paragraph 5 of Plaintiff's Complaint call for a legal conclusion for which no answer is required. To the extent an answer is required; this Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Complaint.**

6. The claims forming the basis of this Complaint, or a significant portion thereof, arose in that geographical area contained within the federal district known as the Northern District of Illinois. Specifically, the parties in substantial part entered into the insurance agreement which forms the basis of this Complaint in said District, and the covered loss which created Defendant's liability occurred in said District.

**ANSWER: This Defendant states that the Insurance Agreement is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 6 to the extent they are not in accordance with the Agreement. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint,**

**and therefore, does not admit or deny the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint, but demands strict proof thereof.**

**The Policy**

7. Defendant issued to Plaintiff Commercial Property Insurance Policy No. ESP 14 024 50 (the "Policy"), effective October 1, 2003, through October 1, 2004. A true and correct copy of the Policy is attached hereto as Exhibit A.

**ANSWER: This Defendant admits that a true and correct copy of Policy No. ESP 14 024 50 is attached as Exhibit "A" to Plaintiff's Complaint. This Defendant further states that the Insurance Agreement is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint to the extent they are not in accordance with the Agreement.**

8. At all times relevant hereto, Plaintiff was current on its premium obligations under the Policy.

**ANSWER: This Defendant admits the allegations contained in Paragraph 8 of Plaintiff's Complaint.**

9. At all times relevant hereto, Plaintiff satisfied all of its obligations and conditions under the Policy.

**ANSWER: This Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.**

**The Roof Collapse**

10. On March 5, 2004, the roof of Plaintiff's facility at 6147 West 65<sup>th</sup> Street in Bedford Park, Illinois (the "Facility"), partially collapsed due to wind and heavy rainfall (the "Roof Collapse").

**ANSWER: This Defendant has insufficient information to admit or deny the allegations contained in Paragraph 10 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 10 of Plaintiff's Complaint, but demands strict proof thereof.**

11. The Roof Collapse is a covered loss under the terms of the Policy.

**ANSWER: This Defendant admits the allegations contained in Paragraph 11 of Plaintiff's Complaint.**

**The Claim**

12. As a direct and proximate result of the Roof Collapse, Plaintiff incurred the following losses: (1) structural damage to the Facility, which Plaintiff owned; (2) loss of inventory located at the Facility; (3) business interruption with resultant loss; and (4) loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy.

**ANSWER: This Defendant denies Plaintiff's allegations contained in Paragraph 12 of Plaintiff's Complaint regarding loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 12 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 12 of Plaintiff's Complaint, but demands strict proof thereof.**

13. Plaintiff notified Defendant of the Roof Collapse immediately upon its occurrence. Plaintiff notified Defendant through Defendant's local agent, Richard T. Scodro.

**ANSWER: This Defendant admits that Plaintiff notified Defendant through Defendant's local agent, Richard T. Scodro. This Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 13 of Plaintiff's Complaint, and therefore, does not admit or deny the allegations contained in Paragraph 13 of Plaintiff's Complaint, but demands strict proof thereof.**

14. Plaintiff submitted to Defendant a sworn statement of loss not later than April 1, 2004.

**ANSWER: This Defendant denies that Plaintiff submitted a proper proof of loss.**

15. Plaintiff has supplied all information reasonably requested by Defendant.

**ANSWER: This Defendant denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.**

16. Plaintiff has supplied Defendant with thousands of pages of documents requested by Defendant to support its claim, often resubmitting the same documentation two or three times.



**ANSWER: This Defendant admits that Plaintiff has supplied Defendant with thousands of pages of documents often resubmitting the same documentation two or three times. This Defendant denies the remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.**

17. Plaintiff, through its president and owner Vishnu Gor ("Mr. Gor"), has had numerous meetings with Gregory A. Crapanzano ("Mr. Crapanzano") and other representatives of Defendant.

**ANSWER: This Defendant admits the allegations contained in Paragraph 17 of Plaintiff's Complaint.**

18. Mr. Gor has undergone two days of sworn deposition testimony at the request of Defendant.

**ANSWER: This Defendant admits the allegations contained in Paragraph 18 of Plaintiff's Complaint.**

19. Defendant has paid Plaintiff not more than \$150,000 as a result of the Roof Collapse, which is a small fraction of Plaintiff's covered loss under the Policy.

**ANSWER: This Defendant admits that it has paid Plaintiff not more than \$150,000 as a result of the Roof Collapse. This Defendant denies the remaining allegations contained in Paragraph 19 of Plaintiff's Complaint.**

20. As a result of Defendant's wrongful refusal to pay the amount due under the Policy, Plaintiff was forced out of business with resulting and substantial additional loss.

**ANSWER: This Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint.**

**The Denial Letter**

21. In a letter dated March 12, 2007, signed by Mr. Crapanzano (the "Denial Letter"), Defendant advised Plaintiff that Defendant does "hereby deny coverage" under the Policy. A true and correct copy of the Denial Letter, as received by Plaintiff, is attached hereto as Exhibit B.

**ANSWER:** This Defendant admits that a true and correct copy of the Denial Letter is attached hereto as Exhibit "B" to Plaintiff's Complaint. This Defendant further states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter.

22. In the Denial Letter, Defendant states as the basis for its denial as follows: "[Plaintiff] has violated the foregoing provisions of the Policy by failing to give costs, values and amounts of the losses claimed; provide books and records for examination; provide a proof of loss containing information requested to investigate the claim; return signed examination answers; and cooperate in the investigation of the claim." These statements are false.

**ANSWER:** This Defendant states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter. This Defendant denies the remaining allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Also in the Denial Letter, which is dated two years and one week after the date of the Roof Collapse, Defendant cites a provision of the Policy stating that, "[N]o one may bring a legal action against ("Defendant") under this Covered Part unless ... the action is brought within two years after the date on which the direct physical loss or damage occurred," and then states that "legal against [Defendant] is precluded because ... the time to file suit has expired."

**ANSWER:** This Defendant states that the Denial Letter is a written instrument that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint to the extent they are not in accordance with the Denial Letter.

24. Defendant's claim of untimely filing of the instant action is false. Specifically, the Illinois Insurance Code, 215 ILCS 5/143.1, provides that any period of limitations in a policy such as the Policy is tolled from the date proof of loss is filed until the date the claim is denied in whole or in part.

**ANSWER:** This Defendant states that the Illinois Insurance Code, 215 ILCS 5/143.1 is a written document that speaks for itself, and therefore, this Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint to the extent they are not in accordance with the Code. This Defendant denies the remaining allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Plaintiff demands trial by jury.

**ANSWER:** This Defendant makes no response to Paragraph 25 of Plaintiff's Complaint as no response is required.

**WHEREFORE** the Defendant, SENECA INSURANCE COMPANY, INC., respectfully requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice and with costs, and/or such further relief as this Court deems just.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

2. Plaintiff did not and has not satisfied the Conditions of the Policy No. ESP 14 024 50, including, but not limited to, providing Defendant with proper documentation and a proper proof of loss as required by the Policy.

s/ James J. O'Hagan  
James J. O'Hagan (ARDC No. 2094754)  
Jamie L. Filipovic (ARDC No. 6278943)  
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ATTORNEYS FOR DEFENDANT  
SENECA INSURANCE COMPANY, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2008, a copy of foregoing Defendant's, **Seneca Insurance Company, Inc.'s Answer to Plaintiff's Complaint**, was filed electronically and served by e-mail to all parties as shown on the attached Service List by operation of the Court's electronic filing on this 5<sup>th</sup> day of May, 2008. Parties may access this filing through the Court's CM/ECF System.

/s/ James J. O'Hagan

Attorney for Defendants

James J. O'Hagan (ARDC No. 2094754)

Jamie L. Filipovic (ARDC No. 6278943)

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**SERVICE LIST**

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**Melissa Martinez**

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**From:** usdc\_ecf\_ilnd@ilnd.uscourts.gov

**Sent:** Monday, May 05, 2008 3:47 PM

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**Subject:** Activity in Case 1:08-cv-01738 VJ Compounding Corporation vs Seneca Insurance Company, Inc. answer to complaint

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**United States District Court**

**Northern District of Illinois - CM/ECF LIVE, Ver 3.1.3**

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The following transaction was entered by O'Hagan, James on 5/5/2008 at 3:46 PM CDT and filed on 5/5/2008

**Case Name:** VJ Compounding Corporation vs Seneca Insurance Company, Inc.

**Case Number:** 1:08-cv-1738

**Filer:** Seneca Insurance Company, Inc.

**Document Number:** 12

**Docket Text:**

**ANSWER to Complaint by Seneca Insurance Company, Inc.(O'Hagan, James)**

**1:08-cv-1738 Notice has been electronically mailed to:**

Timothy Scott Harris    tharris@reedsmith.com

James J. O'Hagan    johagan@ohaganspencer.com, mmartinez@ohaganspencer.com

**1:08-cv-1738 Notice has been delivered by other means to:**

Alexander Terras  
Reed Smith LLP  
10 South Wacker Drive  
40th Floor  
Chicago, IL 60606

The following document(s) are associated with this transaction:

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5dcba9ac2280ef514b55e2b34ed73a4669fb43c2a77c48f2528202e52c52]]

5/7/2008

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

VJ COMPOUNDING CORPORATION, d/b/a )  
L. CARLTON MERTZ, CO., an Illinois )  
Corporation, )

Plaintiff,

V.

SENECA INSURANCE COMPANY, INC. a )  
 subsidiary of SENECA INSURANCE GROUP, )  
 INC. a Delaware Corporation, )

Defendant.

Case No. 08 CV 1738

Judge Matthew Kennelly

Magistrate Judge Susan Cox

**SENECA INSURANCE COMPANY, INC.'S ANSWERS TO PLAINTIFF'S FIRST SET  
OF REQUESTS TO ADMIT**

**NOW COMES** the Defendant, Seneca Insurance Company, Inc., by and through its attorney's, O'Hagan Spencer LLC, and for its Answers to Plaintiff's First Set of Requests to Admit, Defendant states as follows:

## REQUESTS TO ADMIT

1. Plaintiff is an Illinois corporation duly licensed to do business in the State of Illinois.

**Answer:** After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 1 is insufficient to admit or deny the allegations in Paragraph 1, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 1 and demands strict proof thereof.

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2. At the time of the Roof Collapse, Plaintiff was conducting business at 6147 West 65<sup>th</sup> Street, Bedford Park, Illinois, 60636, as a manufacturer of industrial cleaning solutions.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 2.

3. Plaintiff currently maintains its principal place of business at 9960 W. 191<sup>st</sup> Street, Unit K, Mokena, Illinois, 60448.

**Answer:** After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 3 is insufficient to admit or deny the allegations in Paragraph 3, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 3 and demands strict proof thereof.

4. Defendant is a Delaware corporation with its principal place of business located in New York, New York.

**Answer:** Defendant denies it is a Delaware Corporation and admits the remaining allegations contained in the Request to Admit in Paragraph 4.

5. The parties are of diverse citizenship.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 5.

6. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 6.

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a).



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**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 7.

8. The claims forming the basis of this Complaint, or a significant portion thereof, arose in that geographical area contained within the federal district known as the Northern District of Illinois.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 8.

9. The parties in substantial part entered into the Policy in that geographical area contained within the federal district known as the Northern District of Illinois.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 9.

10. The covered loss which created Defendant's liability under the Policy occurred in that geographical area contained within the federal district known as the Northern District of Illinois.

**Answer:** Defendant admits that Plaintiff's loss occurred in that geographical area contained within the federal district known as the Northern District of Illinois and denies the remaining allegations contained in the Request to Admit in Paragraph 10.

11. Defendant issued the Policy to Plaintiff.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 11.

12. The coverage provided in the Policy was in place effective October 1, 2003, through October 1, 2004.

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**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 12.

13. A true and correct copy of the Policy is attached to the Complaint as Exhibit A.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 13.

14. Plaintiff was current on its premium obligations under the Policy at all times relevant to the claims made by Plaintiff in the Complaint.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 14.

15. Plaintiff satisfied all of its obligations and conditions under the Policy at all times relevant to the claims made by Plaintiff in the Complaint.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 15.

16. The Roof Collapse occurred on March 5, 2004.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 16.

17. The Roof Collapse was caused by wind and heavy rainfall.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 17.

18. The Roof Collapse is a covered loss under the terms of the Policy.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 18.

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19. Plaintiff was the fee simple owner of the Facility at the time of the Roof Collapse.

**Answer:** After reasonable inquiry, Defendant's knowledge of the allegations in Paragraph 19 is insufficient to admit or deny the allegations in Paragraph 19, and therefore, this Defendant cannot admit or deny the Request to Admit in Paragraph 19 and demands strict proof thereof.

20. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to structural damage to the Facility.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 20.

21. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to loss of inventory located at the Facility.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 21.

22. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to business interruption with resultant loss.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 22.

23. As a direct and proximate result of the Roof Collapse, Plaintiff incurred losses relating to loss of business due to Defendant's failure and refusal to pay the amounts provided under the Policy.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 23.

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24. Plaintiff notified Defendant of the Roof Collapse immediately upon its occurrence.

**Answer:** Defendant admits the allegations contained in the Request to Admit in Paragraph 24.

25. Plaintiff notified Defendant of the Roof Collapse through Defendant's local agent, Richard T. Scodro.

**Answer:** Defendant admits that Richard T. Scodro, a broker, was notified and denies all other remaining allegations contained in the Request to Admit in Paragraph 25.

26. Plaintiff submitted to Defendant a sworn statement of loss not later than April 1, 2004.

**Answer:** Defendant admits Plaintiff submitted the attached proofs of loss dated April 1, 2004, exhibit 103, dated December 8, 2004, exhibit 102, and dated December 7, 2005, exhibit 100.

27. Plaintiff has supplied all information relating to the Roof Collapse reasonably requested by Defendant.

**Answer:** Defendant denies the allegations contained in the Request to Admit in Paragraph 27.

28. Plaintiff has supplied Defendant with thousands of pages of documents requested by Defendant to support its claim relating to the Roof Collapse.

**Answer:** Defendant denies the allegations contained in Request to the Admit in Paragraph 28.

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29. Plaintiff, at the request of Defendant, has often resubmitting (sic) two or three times the same documentation in support of its claim relating to the Roof Collapse.

**Answer:** Defendant admits the duplication of documentation, but denies that it supports any loss in addition to what has been paid. Defendant denies the remaining allegations contained in the Request to Admit in Paragraph 29.

30. Plaintiff, through its president and owner, Mr. Gor, has had numerous meetings with Mr. Crapanzano and other representatives of Defendant.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 30.

31. Mr. Gor has undergone two days of sworn deposition testimony at the request of Defendant.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 31.

32. Defendant has paid Plaintiff not more than \$150,000 as a result of the Roof Collapse.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 32.

33. The amount paid by Defendant to Plaintiff to date is a small fraction of Plaintiff's covered loss under the Policy.

**Answer:** Defendant denies the allegations contained in Request to Admit Paragraph 33.

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34. As a result of Defendant's wrongful refusal to pay the amount due under the Policy, Plaintiff was forced out of business with resulting and substantial additional loss.

**Answer:** Defendant denies the allegations contained in Request to Admit Paragraph 34.

35. A true and correct copy of the Denial Letter is attached to the Complaint as Exhibit B.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 35.

36. In signing and sending to Plaintiff the Denial Letter, Mr. Crapanzano was acting as Defendant's authorized representative.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 36.

37. In the Denial Letter, Defendant advised Plaintiff the Defendant does "hereby deny coverage" under the Policy.

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 37.

38. In the Denial Letter, Defendant states as the basis for its denial as follows: "[Plaintiff] has violated the foregoing provisions of the Policy by failing to give costs, values and amounts of the losses claimed; provide books and records for examination; provide a proof of loss containing information requested to investigate the claim; return signed examination answers; and cooperate in the investigation of the claim."

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**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 38.

39. The statements made by Defendant as quoted in the preceding Request to Admit are false.

**Answer:** Defendant denies the allegations contained in Request to Admit Paragraph 39.

40. Also in the Denial Letter, which is dated two years and one week after the date of the Roof Collapse, Defendant cites a provision of the Policy stating that, "[N]o one may bring a legal action against ("Defendant") under this Covered Part unless ... the action is brought within two years after the date on which the direct physical loss or damage occurred," and then states that "legal against [Defendant] is precluded because ... the time to file suit has expired."

**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 40.

41. The Illinois Insurance Code, 215 ILCS 5/143.1, provides that any period of limitations in a policy such as the Policy is tolled from the date proof of loss is filed until the date the claim is denied in whole or in part.

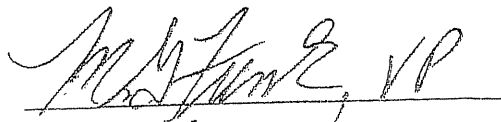
**Answer:** Defendant admits the allegations contained in Request to Admit Paragraph 41.

42. Defendant's assertion as contained in the Denial Letter that Plaintiff's right to bring suit on the Policy as of the date of the Denial Letter was false.

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Answer: Defendant denies the allegations contained in Request to Admit Paragraph 42.



Melvin Funk

Vice President of Property Claims  
Seneca Insurance Company Inc.  
160 Water Street, 16th Floor  
New York, N.Y. 10038

Dated: June 5, 2008



M1

## SWORN STATEMENT IN PROOF OF LOSS

EXHIBIT

tabler  
100  
5/8/06\$ 2,500,000  
AMOUNT OF POLICY AT TIME OF LOSS

Oct. 1, 2003

DATE ISSUED

Oct. 1, 2004

DATE EXPIRES

ESP 14 024 50

POLICY NUMBER

RBN &amp; Assoc.

AGENCY AT

Richard T. Scodro

AGENT

To the Seneca Insurance Company, Inc.  
of New York, New York

At time of loss, by the above indicated policy of insurance you insured

V.J. Compounding d/b/a L. Carlton Martin Co.against loss by "Special Form" see policy to the property described under Schedule "A," according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.1. Time and Origin: A property damage and business income loss occurred about the hour of 8:30 o'clock A. M.,on the 5 day of March 2003. The cause and origin of the said loss were: partial roof collapse  
leading to water damage

2. Occupancy: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever:

3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was contract packaging operations  
lessee  
except: Ravi Corporation, as lessor  
No other person or persons had any interest therein or incumbrance thereon,4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: contract packaging operations ceased on November 30, 2004.5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 2,500,000  
as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.6. The Actual Cash Value of said property at the time of the loss was \$ \_\_\_\_\_  
7. The Whole Loss and Damage was \$ 2,100,000.00  
8. Less Amount of Deductible \$ 5,000.00  
9. The Amount Claimed under the above numbered policy is \$ 1,666,000.00

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of ILLINOISCounty of DUPAGE

Subscribed and sworn to before me this

7<sup>th</sup> day of DECEMBER 2005Cathy S. Brown Notary Public"OFFICIAL SEAL"  
CATHY S. BROWN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 6/13/2009V.J. Compounding d/b/a L. Carlton Martin Co.BY: Vicki Lee Insured

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime."

(OVER)

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Filed 07/03/2008

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P. 1

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MERTZ

17085948657

# SWORN STATEMENT IN PROOF OF LOSS

\$ 2,500,000  
 AMOUNT OF POLICY AT TIME OF LOSS  
Oct. 1, 2003  
 DATE ISSUED  
Oct. 1, 2004  
 DATE EXPIRES

ESP 14 024 50  
 POLICY NUMBER  
RBN of Ass.  
 AGENCY AT  
RICHARD T. SCODRO  
 AGENT

To the SENECA INSURANCE CO. INC. NEW YORK, N.Y.  
 of  
 At time of loss, by the above indicated policy of insurance you insured  
V1 Compounding DBA L. CARLTON MERTZ CO  
 against loss by "SPECIAL FORM SEE POLICY" to the property described under Schedule "A," according to the  
 terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.  
 1. Time and Origin: A PROP. DAMAGE Bldg. Lease Income Loss loss occurred about the hour of 6 o'clock A M.  
 on the 5 day of 2004. The cause and origin of the said loss were: PARTIAL ROOF COLLAPSE

LEADING TO WATER DAMAGES  
 2. Occupancy: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever:

CONTRACT PACKAGING OPERATIONS  
 3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was Lease Lessor  
 except: RAVI CORP. Lease Lessor  
 4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure  
 of the property described, except CONTRACT PACKAGING OPERATIONS CEASED ON  
Nov 1, 2004 Nov 10, 2004

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 2,500,000  
 as more particularly specified in the appointment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or  
 invalid.

6. The Actual Cash Value of said property at the time of the loss was \$ TO BE DETERMINE  
 7. The Whole Loss and Damage was TO DATE \$ 1,094,751  
 8. Less Amount of Deductible \$ 5000  
 9. The Amount Claimed under the above numbered policy is TO DATE \$ 1,089,751

The said loss did not originate by any act, design or procurement on the part of your insured, or this agent; nothing has been done by or with the privy or  
 consent of your insured or this agent, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such  
 as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to  
 extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of Ill  
 County of Cook

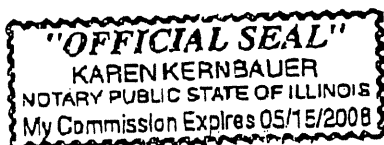
L. CARLTON MERTZ CO.  
 BY: Victor Ger Insured

Subscribed and sworn to before me this

8th day of December 20 04

Karen Kernbauer

Notary Public



"Any person who knowingly and with intent to defraud any in-  
 surance company or other person files a statement of claim contain-  
 ing any materially false information, or conceals for the purpose of  
 obtaining, information concerning a claim, or attempts to obtain a  
 claim under an insurance policy, shall be liable under the provisions of the  
 Illinois Insurance Code, Chapter 120, Section 1-10." (7-1)

EXHIBIT

tabbies  
102  
5/18/06

(OVER)

tabbies

103

## SWORN STATEMENT IN PROOF OF LOSS

\$ 2,500,000.00  
 AMOUNT OF POLICY AT TIME OF LOSS  
10/01/2003  
 DATE ISSUED  
10/01/2004  
 DATE EXPIRES

SENECA INSURANCE COMPANY, INC.  
 160 WATER STREET, 16TH FLOOR  
 NEW YORK, NY 10038  
 Claim #: 4CCN031

ESP 14 024 50  
 POLICY NUMBER  
Chicago, IL  
 AGENCY AT  
Travis-Pedersen  
 AGENT

To the Seneca Insurance Company  
 of 160 Water Street, NY, NY 10038  
 At time of loss, by the above indicated policy of insurance you insured

VJ Compounding, Inc d/b/a L. Carlton Mertz. Co., and Ravi Co  
6147 West 65th Street, Chicago, IL 60638

against loss by Collapse to the property described under Schedule "A," according to the  
 terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.  
 1. Time and Origin: A Collapse loss occurred about the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M.,  
 on the 03 day of March 2004. The cause and origin of the said loss were: Collapse

2. Occupancy: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever:

## Manufacturing Facility

3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was  
Owner No other person or persons had any interest therein or incumbrance thereon,  
 except None

4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure  
 of the property described, except None

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 2,500,000.00  
 as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or  
 invalid.

6. The Actual Cash Value of said property at the time of the loss was \$ \_\_\_\_\_  
 7. The Whole Loss and Damage was \$ \_\_\_\_\_  
 8. Less Amount of Deductible \$ \_\_\_\_\_  
 9. The Amount Claimed under the above numbered policy is Advance for building shoring and stabilization \$ 15,000.00

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or  
 consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such  
 as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to  
 extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Notary Public

Witnessed by Gregory A. Capomano  
[Signature]

BY: VISHNU GAR 4/01/04 Insured

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime."

(OVER)

## SWORN STATEMENT IN PROOF OF LOSS

\$ 2,500,000.00  
 AMOUNT OF POLICY AT TIME OF LOSS  
 10/01/2003  
 DATE ISSUED  
 10/01/2004  
 DATE EXPIRES

SENECA INSURANCE COMPANY, INC.  
 160 WATER STREET, 16TH FLOOR  
 NEW YORK, NY 10038  
 Claim #:  
 4CCN031

ESP 14 024 50  
 POLICY NUMBER  
 Chicago, IL  
 AGENCY AT  
 Travis-Pedersen  
 AGENT

To the Seneca Insurance Company  
 of 160 Water Street, NY, NY 10038

At time of loss, by the above indicated policy of insurance you insured

VJ Compounding, Inc d/b/a L. Carlton Mertz. Co., and Ravi Col

6147 West 65th Street, Chicago, IL 60638

against loss by Collapse to the property described under Schedule "A," according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin: A Collapse loss occurred about the hour of o'clock M.,

STATE KIND

on the 03 day of March 2004. The cause and origin of the said loss were: Collapse

2. Occupancy: The building described, or containing the property described, was occupied at the time of loss as follows, and for no other purpose whatever:

### Manufacturing Facility

3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was Owner No other person or persons had any interest therein or incumbrance thereon, except: None

4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: None

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 2,500,000.00 as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. The Actual Cash Value of said property at the time of the loss was \$

7. The Whole Loss and Damage was \$

8. Less Amount of Deductible \$

9. The Amount Claimed under the above numbered policy is Advance payment for BI & EE Loss \$ 50,000.00

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of

County of

Subscribed and sworn to before me this day of 20

Notary Public

Witnessed by Gregory A. Capanzano

Vishnu Gor  
 BY: VISHNU GOR 4/01/04 Insured

"Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime."

(OVER)